IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	CIVIL DIVISION
	)	No.: 00-CV-2041
Plaintiff,	)	
	)	JUDGE WILLIAM L. STANDISH
v.	)	
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES VON BERNUTH, JOHN HERKLOTZ, an individual,	)	
Defendants.	)	

MOTION TO COMPEL DISCOVERY

AND NOW, comes Defendant, JOHN HERKLOTZ, by his attorneys, John P. Sieminski, Esquire, and Burns, White & Hickton, LLC, and files this Motion to Compel Discovery, of which the following is a statement:

1. This matter has been pending since it was filed by Plaintiff on October 13, 2000.

2. As indicated by the record relative to prior Motions to Compel filed by this Defendant (Document 40) and Defendant Charles Von Bernuth (Document 38), the Court has entered prior orders compelling Plaintiff to cooperate in the process of discovery. (*See* Order entered on record as document 44).

3. On September 7, 2005, this Defendant served a Second Set of Interrogatories and Request for Production of Documents on WRS. (*See* cover letter appended hereto as Exhibit "A.")

4. On September 13, 2005, counsel for WRS called counsel for Herklotz on the telephone and indicated that he (counsel for WRS) was meeting with his client the next day to prepare interrogatory answers and gather responsive documents.

5. On September 27, 2005, counsel for Defendant Herklotz served a Notice of Deposition Directed to WRS President Jack Napor and a Notice of Deposition of the Corporate Designee of WRS, Inc. Pursuant to F.R.C.P. 30(b)(6). The deposition of Jack Napor was scheduled for Wednesday, October 12, 2005 commencing at 10:00 a.m. and the deposition of WRS, Inc.'s corporate designee was scheduled for the same date commencing at 2:00 p.m. (*See* Deposition Notices appended hereto as Exhibits "B" and "C.") Counsel for Herklotz understood when the Notices were sent that the dates might not be workable for WRS's counsel and the witnesses and this turned out to be the case.

6. After the Deposition Notices were sent, counsel for WRS and Herklotz communicated via telephone about the need for:

a. A representative of WRS to be designated pursuant to FRCP 30(b)(6);

b. Suitable deposition dates for the designated representative and Mr. Napor to be agreed upon;

c. Interrogatories to be answered by WRS; and,

d. Documents to be produced by WRS.

7. Counsel for WRS always assured counsel for Herklotz that he (counsel for WRS) was working on the discovery issues and would respond in the near future.

8. On October 12, 2005, counsel for Defendant Herklotz sent a detailed letter setting forth the discovery chronology and discussing the issues. (*See* letter appended hereto as Exhibit "D.")

9. Counsel for WRS again assured counsel for Herklotz that he (counsel for WRS) was working on the discovery issues and would respond in the near future.

10. On October 26, 2005, counsel for Herklotz wrote an e-mail to counsel for WRS and inquired as to the status of discovery. Counsel for WRS again responded that he was working on the written discovery and that he would provide deposition dates the next day. (*See* e-mail exchange appended hereto as Exhibit "E.") As of the date of the filing of this Motion, counsel for WRS has not provided the written discovery responses, he has not designated a representative for WRS for a FRCP 30(b)(6) deposition, nor has he provided deposition dates.

11. Upon information and belief, WRS has engaged in this evasive pattern of inaction relative to discovery to obscure the fact that it does not have facts or documents that support its claims in this matter.

12. Discovery in this matter was scheduled by the Court to close on December 9, 2005. In consideration of the length of time that this matter has been pending, Defendant Herklotz does not desire an extension of the discovery period. On the contrary, Defendant Herklotz respectfully requests that the Court order WRS to

cooperate in the discovery process and provide all discoverable information in its possession to Defendant Herklotz in accordance with the following schedule:

a. WRS shall provide full and complete answers to Defendant Herklotz's Second Set of Interrogatories and all documents responsive to Defendant Herklotz's Request for Production of Documents by Thursday, November 10, 2005.

b. WRS shall produce its representative designated pursuant to FRCP 30(b)(6) for a deposition at the law offices of Burns, White & Hickton on Tuesday, November 15, 2005 at 10:00 a.m.

c. WRS shall produce its Mr. Jack Napor a deposition at the law offices of Burns, White & Hickton on Wednesday, November 16, 2005 at 10:00 a.m.

WHEREFORE, Defendant, JOHN HERKLOTZ, requests that this Honorable Court enter an Order compelling Plaintiff to participate in discovery as requested above, upon default thereof to suffer dismissal of the case as a sanction or such other relief as the Court deems appropriate.

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion to Compel Discovery** was served on counsel listed below by electronic mail on this 3rd day of November, 2005:

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By: *John P. Sieminski*
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